

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	13-CR-150(WFK)
	:	
	:	U.S. Courthouse
	:	Brooklyn, New York
-against-	:	
	:	TRANSCRIPT OF
	:	PRETRIAL CONFERENCE
	:	
MOHAMMAD CHOUDHRY,	:	June 9, 2014
	:	10:30 a.m.
Defendant.	:	

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BEFORE:
HONORABLE WILLIAM F. KUNTZ II, U.S.D.J.

APPEARANCES:

For the Government: LORETTA E. LYNCH, ESQ.
United States Attorney
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Brooklyn, New York 11201
BY: AMANDA HECTOR, ESQ.
RICHARD TUCKER, ESQ.
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Assistant U.S. Attorneys

For the Defendant: FREDERICK SOSINSKY, ESQ.

Punjabi Interpreter: Upi Sharma

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1 THE COURTROOM DEPUTY: We're here for a criminal
2 pretrial conference, docket number 13-CR-150, USA versus
3 Choudhry.

4 Counsel, may you please state your appearances for
5 the record, spell your names for the court reporter, including
6 the interpreter.

7 MS. HECTOR: Your Honor, I believe that Mr. Sosinsky
8 is perhaps bringing his client out.

9 THE COURT: Well, I certainly don't see him, nor do
10 I see his client so we'll just abide the event. I'm not about
11 to proceed in a criminal case without the defendant present.

12 (Pause.)

13 (Defendant enters courtroom with Mr. Sosinsky and
14 the marshals.)

15 THE COURT: Mr. Jackson, would you please call the
16 case.

17 THE COURTROOM DEPUTY: We're here for a criminal
18 pretrial conference, docket number 13-CR-150, USA versus
19 Choudhry.

20 Counsel, may you please state your appearances for
21 the record, spell your names for the court reporter, including
22 the interpreter please.

23 MS. HECTOR: Yes. Amanda Hector, Rich Tucker and
24 Maggie Gandy for the government. Hector is H-E-C-T-O-R,
25 Tucker is T-U-C-K-E-R, and Gandy is G-A-N-D-Y.

1 Good morning, Your Honor.

2 THE COURT: Good morning. You may be seated.

3 MR. SOSINSKY: Good morning, Your Honor, for
4 Mr. Choudhry, Fred Sosinsky. S-O-S-I-N-S-K-Y is the spelling
5 of my last name. Mr. Choudhry is here in court. We have the
6 interpreter next to us.

7 THE COURT: Good morning.

8 And the interpreter, would you state your name
9 please.

10 THE INTERPRETER: Interpreter's name is Upi Sharma.

11 THE COURT: Would you spell that.

12 THE INTERPRETER: S-H-A-R-M-A.

13 THE COURT: Thank you.

14 Mr. Jackson, would you please swear the interpreter.

15 THE COURTROOM DEPUTY: Yes, Your Honor.

16 (Interpreter sworn by the courtroom deputy.)

17 THE COURT: Thank you. You may be seated. And
18 ladies and gentlemen in the public gallery, you may be seated
19 as well. All right.

20 We are here on a pretrial conference in the action
21 of United States of America versus Choudhry. There are a
22 number of issues that the Court anticipates the parties will
23 need to discuss but rather than the Court playing guess with
24 respect to the issues, I think I'll ask the prosecution to go
25 through their issues and the defense to respond with respect

1 to those issues and then we can take them seriatim. If
2 there's anything on my list that you haven't addressed, we
3 can touch on it. Just at 30,000 feet, my list includes the
4 issues concerning proposed expert witness testimony, motions
5 in limine, foreign witnesses who are unwilling and/or unable
6 to come to the United States, the proposed voir dire that
7 we're expecting to receive later today, outstanding discovery,
8 if any, 3500 material, the question of the trial date, the
9 question of jury selection date and any issues that arise from
10 the second superseding indictment which was filed on June 6
11 and has been reviewed by this Court which had additional facts
12 relating to Count One.

13 So, that's the sort of general overview, but start
14 with you, Ms. Hector, tell me what you want to talk about.

15 MS. HECTOR: Certainly, Your Honor. Perhaps the
16 first order of business should be arraigning the defendant on
17 the superseding indictment. As the Court I'm sure is aware,
18 the only differences between the last superseding indictment
19 and this, which is S-2, is the addition of several overt acts
20 to Count One, which is the conspiracy charge, and specifically
21 those overt acts are now alleged as e, f, g and j, and they
22 are comprised of the consensually recorded telephone calls,
23 which obviously the defendant has had for some time now,
24 between his daughter and himself.

25 THE COURT: All right. Let me turn to defense

1 counsel. Would you like the Court to read the superseding
2 indictment and to ask the defendant how he pleads with respect
3 to the superseding indictment -- first of all, have you
4 received the superseding indictment, sir?

5 MR. SOSINSKY: I have.

6 THE COURT: Have you reviewed it?

7 MR. SOSINSKY: I have.

8 THE COURT: And have you reviewed it with your
9 client?

10 MR. SOSINSKY: I have reviewed it with my client
11 both with the services of the court interpreter and myself.
12 He has physically seen the new indictment and had the changes
13 explained to him this morning.

14 THE COURT: All right. Well, would you like me to
15 read the superseding indictment to him in its entirety so
16 there is no confusion for my friends on the 17th floor as to
17 the fact that he indeed was arraigned with respect to the
18 superseding indictment or do you think that's not necessary?

19 MR. SOSINSKY: We would waive that request, Your
20 Honor. I've been over it with him and I'm prepared to enter a
21 plea of not guilty on the superseding indictment on his behalf
22 with the Court's permission.

23 THE COURT: Yes.

24 Madame prosecutor, is that acceptable?

25 MS. HECTOR: Yes, Your Honor.

1 THE COURT: Then the plea of not guilty with respect
2 to the superseding indictment is entered.

3 MS. HECTOR: Your Honor, perhaps the next order of
4 business should be we're aware of the new trial date which is
5 June 23rd, I believe that there's a joint request from defense
6 and the government to have jury selection proceed on June 16th
7 for several reasons. One, it's a jury return date. I know
8 that that's not dispositive but it is certainly sort of easier
9 for court personnel. Two, we are anticipating at this point
10 that the trial, both the government's case and the defense
11 case, will be finished inside of two weeks. That would mean
12 that we would be finished prior to the July 4th holiday but
13 getting close to it. Because of that, we're anticipating that
14 there may be a significant number of jurors who raise an issue
15 with serving on the jury because of vacation perhaps and the
16 like. For that reason, we also think that it would be
17 beneficial to get a running start June 23rd in the morning
18 with opening statements and witnesses having already taken
19 care of jury selection with the understanding that jury
20 selection may take a little bit longer because there will be
21 people who have vacation plans. So, for those reasons, I
22 think there's a joint request to do jury selection on June 16.

23 THE COURT: Let me hear from defense counsel.

24 MR. SOSINSKY: We have no problem with that request,
25 we are prepared to move forward with jury selection --

1 THE COURT: I'm going to ask you to use the
2 microphone, sir.

3 MR. SOSINSKY: We would have no problem going ahead
4 with jury selection next week and then beginning with
5 testimony and opening statements before testimony the
6 following Monday.

7 THE COURT: All right. I am inclined to grant the
8 application since it is a joint application and since the
9 holiday is looming. I am a little bit concerned about
10 interaction or the potential for interaction with identified
11 jurors in the week between jury selection and the start of the
12 trial because there will be some press attention to this case
13 and I worry about the fact that this is not an anonymous jury
14 and I worry about the fact that we have an intervening week.

15 Ordinarily it is the practice of this court, as you
16 may or may not know, to pick and go, we pick the jury and we
17 go. So, I am voicing a concern. If it is not a concern of
18 the prosecution and if it is not a concern of defense counsel,
19 if you state that on the record, then I will be inclined to
20 grant your application.

21 MS. HECTOR: Your Honor, at this point that's not a
22 concern of the government. Obviously if someone were to raise
23 an issue during that time period, we would address it. Sort
24 of slightly differently than that, of course we would expect
25 that the Court would instruct the jury that they are not to do

1 any sort of research, they're not to do any sort of online
2 looking.

3 THE COURT: I know but as I'm well known for saying,
4 if you tell people not to think about a rhinoceros, they tend
5 to think about a rhinoceros. So, I'll certainly give them a
6 cautionary instruction.

7 All right. I'll hear from defense counsel.

8 MR. SOSINSKY: We concur with the government, Judge,
9 we have no particular issue.

10 THE COURT: We will then begin jury selection at
11 9:30 a.m. on Monday, June the 16th. We'll select the jury
12 here in this courtroom. I would anticipate that we will have
13 a pool of between 100 and 150 jurors to pick from.

14 Do you think that's sufficient?

15 MS. HECTOR: I think that would be sufficient, Your
16 Honor.

17 MR. SOSINSKY: Yes.

18 THE COURT: Okay. All right. Next item.

19 MS. HECTOR: Your Honor mentioned 3500. As Your
20 Honor is aware, while it is not required under the rules, it's
21 our office's practices to provide 3500 a week in advance.
22 Given that the trial has moved a week, we would propose that
23 we provide that to defense counsel a week in advance of trial.

24 THE COURT: A week in advance of trial meaning?

25 MS. HECTOR: Meaning the day of jury selection,

1 June 16th.

2 THE COURT: Well, today is June the 9th, so you're
3 talking about --

4 MS. HECTOR: A week from today.

5 THE COURT: A week from today. I just didn't want
6 there to be any confusion about that because some people say
7 the trial starts when you select the jury.

8 MS. HECTOR: Certainly, Your Honor.

9 THE COURT: Well, some people, not necessarily me.
10 How about defense counsel, what is your view on that?

11 MR. SOSINSKY: I concur with Your Honor's final
12 statement about when the trial begins.

13 THE COURT: I'm just observing that there are
14 different views about when the trial begins. Having said
15 that, are you comfortable receiving the 3500 material on the
16 23rd?

17 MR. SOSINSKY: The 16th.

18 THE COURT: The 16th.

19 MR. SOSINSKY: The 16th is what's being offered,
20 right, as compared with what our prior agreement so ordered
21 by the Court had been. I am not comfortable with it but I
22 understand what the timing had been pursuant to that
23 agreement. I'm not sure why at this juncture, also bearing
24 in mind an issue we'll turn to in a moment about having to go
25 out and find an expert in light of the disclosure from the end

1 of last week, why the government would not want us to be
2 better prepared.

3 THE COURT: You know what happens to district court
4 judges who try to tell the government when to turn over 3500
5 material.

6 MR. SOSINSKY: They get listened to.

7 THE COURT: Well, I think what we'll do is you'll
8 turn it over, on or before what date?

9 MS. HECTOR: June 16th, Your Honor.

10 THE COURT: On or before June 16th it will be turned
11 over to the defense counsel.

12 Next item.

13 MS. HECTOR: The next item, Your Honor, with respect
14 to foreign witnesses, the parties are proceeding tomorrow
15 morning with a Rule 15 deposition of the one Pakistani witness
16 who was unwilling to travel to the United States and with
17 respect to the defendant's other proposed witnesses, the
18 government has made arrangements to provide a special parole
19 for those witnesses to come to the United States to testify
20 and everything is proceeding as planned with respect to that
21 and so we fully anticipate that those witnesses will appear
22 for trial.

23 THE COURT: Now, let's talk about the logistics
24 of that. Where will the lawyers be when the deposition is
25 held?

1 MS. HECTOR: The lawyers and the defendant himself
2 will be present at our offices.

3 THE COURT: Our offices being?

4 MS. HECTOR: The U.S. Attorney's Office and the
5 deposition will take place over what's called a VCT network.

6 THE COURT: Which stands for?

7 MS. HECTOR: I believe video teleconferencing. So,
8 the parties will all be able to see each other, it will be
9 videotaped and it will be simultaneously transcribed by a
10 court reporter so there will be a transcript, and then I
11 expect that the parties will probably have some applications
12 to the Court, may or may not, about which portions of that
13 deposition will be admissible at trial and that sort of thing
14 but that cannot be anticipated until we actually have the
15 deposition.

16 THE COURT: Is that your understanding as well?

17 MR. SOSINSKY: Yes, sir.

18 THE COURT: Now, this testimony obviously will be
19 open to the public including the press, is that right?

20 MR. SOSINSKY: Once the testimony itself is offered
21 as would be any other testimony during the course of the
22 trial, then it would be.

23 MS. HECTOR: Yes, Your Honor.

24 THE COURT: The deposition is what I'm asking about,
25 is that open to the public or not?

1 MS. HECTOR: The deposition in our offices, no, but
2 to the extent that it is offered in court during the trial as
3 part of the trial, that will be open to the public to view.

4 THE COURT: What is the defendant's view of that?

5 MR. SOSINSKY: That's consistent with our
6 understanding, Your Honor.

7 THE COURT: All right. So, the deposition will not
8 be open to the public but obviously the portions of the
9 testimony that are offered and that are admitted at trial
10 will, of course, be part of the public record.

11 MS. HECTOR: Yes.

12 MR. SOSINSKY: Yes, sir.

13 THE COURT: I want to make that clear.

14 MR. SOSINSKY: Yes, sir.

15 THE COURT: And that's by agreement of the parties.

16 All right. What's next?

17 MS. HECTOR: Your Honor, I think what's next is
18 probably the government moved in limine to admit several
19 categories of evidence at trial. The government, as set
20 forth in our papers, believes that all of the evidence that
21 we set forth in that motion or categories of evidence are
22 admissible and proper evidence as part of this trial. I
23 believe Mr. Sosinsky agrees with some of it and disagrees with
24 other portions of it.

25 THE COURT: Sir.

1 MR. SOSINSKY: Yes, Your Honor. As I've written to
2 the Court last week, there are certain items submitted in
3 connection with the government's memorandum that we would not
4 object to their admission and we've taken them seriatim in our
5 submission. In particular, the videotapes that were taken or
6 the portions of videotapes taken during the course of --

7 THE COURT: During the wedding celebrations with the
8 firearms. Look, I think that, just to make life easier for
9 both sides, I'm going to admit the videos; to the extent that
10 you can agree on language of a limiting instruction, and both
11 of you talked about that possibility, you are encouraged to
12 see if you can stipulate to the limited use. If you can't,
13 then just give me your respective submissions and I will
14 create my own new and improved limiting instruction with
15 respect to the purposes for which the video is being offered
16 such as showing relationships, showing familiarity with
17 firearms, but not necessarily offered to show that any local
18 firearms statutes have been violated. There are many parts
19 of the world where people fire off guns in celebrations,
20 including in our own country.

21 So, to the extent that you can agree on a limiting
22 instruction with respect to the video, you should do so. If
23 you can't, I'll earn my pay and give a limiting instruction,
24 all right, but the video is going to come in and I'm not going
25 to redact it, I'm going to show the whole thing. Okay.

1 You also have the question of -- do you want to talk
2 about experts now or what else do you want to address?

3 MS. HECTOR: Perhaps we -- go ahead.

4 MR. SOSINSKY: I think both sides have outlined
5 their positions with regard to other items contained within
6 the government's motion in limine. I don't know if Your Honor
7 wants us to address that.

8 THE COURT: Ms. Hector, why don't you go through
9 them.

10 MS. HECTOR: Certainly. The next category would be
11 co-conspirator statements. There's various conspiracies,
12 charged and uncharged, and the government submits that the
13 types of statements outlined in our motion are all admissible
14 and proper.

15 THE COURT: Those are coming in, the co-conspirators
16 in furtherance of the conspiracy, those statements are coming
17 in. You can argue what you want to argue about them but
18 they're going to come in. Juries are smart, they sort this
19 out, that's why we have juries.

20 MS. HECTOR: The next issue, Your Honor, is the
21 defendant's statement regarding a prior incident, this is a
22 statement on consensual recordings between the defendant -- in
23 the defendant's own voice between the defendant and his
24 daughter in which, in the context of talking to his daughter
25 and threatening her and sort of interstate threats, of course

1 as Your Honor knows, is one of the charges in the indictment,
2 one of those threats is that he explains to her that he has
3 previously taken action to shoot at other individuals in
4 response to an affront to his honor and will do so again.

5 The government's position is that this is direct
6 evidence of the crime of transmission of interstate threats.
7 The defendant's statement is a threat in and of itself and so,
8 it is the crime charged. There's no multiple threats
9 throughout those calls but this is one of them. So, the
10 government's position is that it is absolutely admissible
11 because it is direct evidence.

12 In addition, we will be submitting jury
13 instructions in the next day or two and one of the
14 instructions specifically with respect to the threat charge
15 is that the government needs to show that the person who
16 heard the threat understood it to be a true threat. That's
17 not -- I think the defendant is confused with the issue a
18 little bit and says that the government then needs to show
19 that the defendant in fact previously shot at other
20 individuals. That's not what the government needs to show.
21 What the government needs to show is that the listener
22 objectively, based on the listener's understanding of the
23 context, understood it to be a true threat and the fact that
24 the defendant is referencing a prior incident that the
25 listener was aware of of an issue involving her sister goes to

1 show that Amina, the daughter, took the defendant's words as
2 true, not a joke, not a sort of hyperbole but a very true
3 threat and so for that reason as well it comes in.

4 THE COURT: Your response?

5 MR. SOSINSKY: First of all, I think both sides
6 agree that the language -- the case was cited in the
7 government's papers, but the language in United States
8 versus Sovie will be matters for which the Court will be
9 instructing the jury in this case and evaluating whether or
10 not these are real threats or otherwise.

11 The government just made mention, Your Honor, of the
12 defendant threatening her, meaning his daughter, during the
13 course of this call or calls and in that regard, I wanted to
14 point out, I think I did in my papers, he's not charged with
15 that. Count Three concerns, as I read it and as I understand
16 it, threats that were made regarding the family of what's
17 referred to as John Doe in the indictment but that we now
18 understand to be the family of Shujat Abbas for the reasons
19 that the government has proffered allegedly.

20 The government I don't believe makes the claim that
21 whatever it is that the defendant was talking about in
22 speaking during this conversation with his daughter is real
23 itself, meaning there's no evidence, nor do they claim, at
24 least so far, that he ever or anyone on his behalf ever shot
25 at anybody years back and we're talking many, many years

1 before this when there was an issue with one of Amina's
2 sisters, one of my client's older daughters, for a single
3 night here in Brooklyn. I think that's something that the
4 Court needs to consider in evaluating whether or not, even if
5 you accept the argument that it's relevant, whether or not the
6 prejudicial impact outweighs whatever relevance or probative
7 value it has.

8 If the government, for example, was before you
9 arguing -- offering that this stuff took place and that the
10 listener knows that that's the case, that would be thing, but
11 beyond that I think what happens is it runs the real risk that
12 jurors, who Your Honor correctly notes are smart people and
13 can figure things out, would understand such a statement as
14 being -- especially since it concerns matters over in
15 Pakistan, which they're going to hear a lot of, real matters,
16 that is that something actually happened and they don't have
17 any evidence in that regard. In fact, it didn't. As I
18 understand, no such thing happened.

19 So, when Your Honor decides the issue of whether or
20 not to allow in -- and there's two classes of evidence, one is
21 the statements that are made but the other is a witness's
22 understanding about sort of the back story, what's being
23 discussed, I think Your Honor must weigh the prejudicial
24 impact of talking about something that never happened, I think
25 even according to the government, in weighing its probity.

1 THE COURT: I'm going to let the statements in. I
2 think that, again, juries are smart and they get it and to the
3 extent you want to argue that these events either did not
4 occur or the witness testifies and she believed the threat and
5 you can say, well, what was the basis of that belief, you'll
6 have plenty of room to go at the witness but in terms of
7 keeping the statements out, I think that that's not
8 appropriate and I'm going to let the statements in.

9 MR. SOSINSKY: Would Your Honor entertain, as you
10 did for the evidence concerning firearms, a limiting
11 instruction?

12 THE COURT: No. I think this is a little bit
13 different. I think the witness can testify with respect to
14 how the witness perceived the alleged threat, whereas with the
15 firearms, you've got people firing off AK-47s and people might
16 think that that's either a good thing or a bad thing. I think
17 it's fair to say that in some cultures and in some places, as
18 I said, including portions of the United States -- you read
19 John Adams, he said that July 2nd would be a date that
20 Americans would fire off guns to celebrate the creation of
21 the American republic. He was off by two days because it took
22 them two days to get all the signatures but in fact, and this
23 is where my Ph.D. burdens me with a little bit of knowledge,
24 that was part of our tradition going back to the founding
25 fathers, you know, John Adams, pretty patriotic guy, pretty

1 good president, pretty good lawyer, represented the Red Coats,
2 he did defense work as well as prosecution work.

3 No, it is going to come in and there will be an
4 appropriate limiting instruction with respect to the firearms
5 and the celebration but with respect to how a witness
6 perceived a threat, the witness will tell how she perceived
7 the threat and you'll have an opportunity to challenge that.

8 MR. SOSINSKY: Your Honor, what about this issue
9 though that I raised separate and apart from that with regard
10 to who the threats as charged are directed at? There's no
11 claim anywhere in the indictment --

12 THE COURT: You can argue that to the jury.

13 MR. SOSINSKY: No, no, of course I can, but I'm
14 hearing a different theory now is my point. I don't know
15 whether the government is offering a different theory. They
16 would be correct legally to argue that the defendant wanted
17 to impress upon his daughter the seriousness of his threats
18 vis-a-vis the so-called victims identified in the indictment,
19 that would be one thing, and Your Honor has ruled that you
20 concur with their argument. It would be quite another if the
21 argument was that then, by virtue of those statements, he is
22 threatening her and that's my concern because that's not
23 charged conduct.

24 THE COURT: Let's hear what the government has to
25 say about that nuance.

1 MS. HECTOR: Your Honor, with respect to Count
2 Three, the government's theory is that the defendant was
3 threatening that if Amina did not return home, he would kill
4 and hurt members of the Abbas family. So, if I misspoke or
5 was not clear, I believe our theory is consistent with how
6 defense counsel is presenting it right now.

7 THE COURT: So, I guess there's nothing that
8 separates you two on that point, as I'm hearing it.

9 MR. SOSINSKY: I just want to be clear on that
10 because -- and if we are, then we are, but that the government
11 is not arguing that in February of 2013 the defendant was then
12 threatening the life of Amina Choudhry if she did not come
13 back home. There's no evidence of that and, in fact, every
14 statement made on tape is to the opposite effect.

15 MS. HECTOR: I would say that with respect to the
16 recorded calls, and I believe this is somewhat argument that
17 needs to be made to the jury, but with respect to the recorded
18 calls, in the recorded calls the defendant's threats are to
19 the Abass family.

20 There are other portions, and we have outlined this
21 in our motion in limine, there are other times at which
22 threats were made to Amina's life and that is true in the
23 context of some of the other uncharged conspiracies but that's
24 sort of an independent issue than what's charged in Count
25 Three.

1 THE COURT: Okay. I think I've got it, I think we
2 should move on. The statements are going to come in.

3 What else do we have?

4 MS. HECTOR: Your Honor, statements of future
5 intent, the Hillman doctrine. One thing I wanted to note,
6 it seems like the defense's issues with those statements are,
7 one, he had an issue that one of the statements he said lacked
8 sort of specificity, you know, sort of what the declarant's
9 stated intention was. There's no requirement within Hillman
10 or the applicable Federal Rules of Evidence that the statement
11 of present intent have a certain level of specificity in terms
12 of who exactly the person is meeting with. It is sufficient
13 if the person -- if the person testifies that he said he was
14 meeting with the Choudhry family, then that's what the
15 statement is. But we'll see how it sort of -- what the
16 witness actually says.

17 But the other issue I had is the defense asked for a
18 limiting instruction that the evidence only come in to show
19 that the declarant acted in conformity therewith and that's
20 not actually the law. There's a couple of cases and I can
21 state them for the Court, United States versus Best, 219 F.3d
22 192, a Second Circuit case in 2000, and United States versus
23 Cicale, a Second Circuit case from 1982, 691 F.2d 95, and
24 basically what those two cases hold is that the statements can
25 actually also come in to show that a non-declarant acted in

1 conformity therewith if there is independent evidence
2 corroborating that another non-declarant acted in conformity
3 therewith. And we would argue that statements of Asghar to
4 the effect of, I'm going to meet with so and so from the
5 Choudhry family, and then shortly thereafter an eyewitness
6 will say, I saw members of the Choudhry family standing over
7 his body, something like that --

8 THE COURT: Poking him with a rifle.

9 MS. HECTOR: That that would be independent
10 corroborating evidence that those people sort of also acted
11 with an intention to meet Asghar or something of that --

12 THE COURT: What is your response to that, counsel,
13 this testimony that's apparently going to be elicited that
14 says there were Choudhry family members poking the bodies with
15 AK-s?

16 MR. SOSINSKY: I've read the government's proffer
17 that there was a member of the family who was doing that and
18 who was apparently, according to eye witnesses, one of the
19 shooters. The statement of future intent I think that we're
20 discussing is one that takes place regarding a meeting much
21 earlier in the day, that is a meeting that was supposed to
22 have taken place at --

23 THE COURT: Much earlier in the same day that they
24 show up allegedly poking the bodies with AK-s?

25 MR. SOSINSKY: Yes.

1 THE COURT: How much time separation do you need,
2 five minutes, ten minutes, really?

3 MR. SOSINSKY: Judge --

4 THE COURT: I mean I think the jury can sort that
5 out.

6 MR. SOSINSKY: If you're asking, I can respond.

7 THE COURT: Yes.

8 MR. SOSINSKY: As I read the government's proffer,
9 it was hours before and in fact, as I understand it, no such
10 meeting ever took place. In other words, it may be that the
11 witness told someone that they were going to meet with one
12 person and members of the Choudhry family but, as I understand
13 it, I don't think there's evidence that in fact anybody was
14 there and that was hours earlier before the shooting.

15 In addition, another statement that they wish to
16 offer is a statement --

17 THE COURT: Let's go back to the hours point. You
18 make it sound as if hours is a vast separation.

19 MR. SOSINSKY: Judge, I'm answering your question.
20 Your Honor will decide.

21 THE COURT: No, my question was is if you think
22 hours is too much, is it a question of minutes?

23 MR. SOSINSKY: I think -- my argument is that under
24 these circumstances, hours is too much and should prevent Your
25 Honor from making that ruling.

1 THE COURT: It's got to be a 60 minute man rule, is
2 that what you're saying? I'm just trying to get a sense of
3 what you're saying in terms of the time gap between the threat
4 and the poking with the AK-s; one hour, two hours, three
5 hours?

6 MR. SOSINSKY: As I've mentioned, it's not simply
7 the temporal objection, Your Honor. There are other events
8 that took place.

9 THE COURT: I'm asking about the temporal objection.

10 MR. SOSINSKY: You're only asking now about the
11 temporal objection?

12 THE COURT: Yes, for the third time, how much time
13 is enough time?

14 MR. SOSINSKY: How much time is enough time so as to
15 permit, is that -- I want to be clear on what you're asking
16 me, Judge. How much time -- if the intent --

17 THE COURT: I'll make this very clear. Somebody
18 says, I'm going to kill a relative; somebody says, I'm going
19 to meet up and do it in three hours or two hours or one hour,
20 and then it happens, now I'm just trying to get a sense of
21 what your timetable is for it being too remote in time.

22 MR. SOSINSKY: Okay. First of all, that's not the
23 evidence in the case.

24 THE COURT: It's a hypothetical. Can you deal with
25 my hypothetical? Will you humor me.

1 MR. SOSINSKY: Addressing your hypothetical.

2 THE COURT: Yes.

3 MR. SOSINSKY: If the statement of, in that case,
4 the declarant was, I'm going to meet someone to kill them, and
5 then later that same day there's witnesses who see them
6 killing him, then I would agree with you that it would be far
7 less important how close in time, especially since the person
8 didn't specify when it was that they supposedly went.

9 THE COURT: So, 24 hours would be okay?

10 MR. SOSINSKY: It would depend on what other proof
11 there was in the case. If, for example, there were -- it was
12 offered before you that there were other intervening
13 individuals who came in contact with the person who might
14 have had interest in causing them harm, that would be I hope
15 something the Court would consider.

16 Getting back, if I could, to this case, I think here
17 this is --

18 THE COURT: We haven't left this case but that's
19 okay, go ahead. I don't want you to think we've left this
20 case in answer to the hypothetical. Go right ahead.

21 MR. SOSINSKY: Getting back to the offer that was
22 made by the government, it was not a statement made by someone
23 saying, I'm going to kill someone later today. It was a
24 statement made by a victim of a shooting saying, I'm going to
25 meet members of a family at a particular time at a particular

1 location. As I understand it, that meeting did not take place
2 and it was scheduled to be hours before.

3 Thereafter, a second offer by the government is
4 that the witness then said or told somebody, it may or may
5 not be the same person to whom the first statement was made,
6 I'm going to be going to pick up my daughter or we're going
7 to be picking up my daughter from school, another event at
8 another -- at a later time that in fact takes place and it is
9 after that second event, okay, takes place that the shooting
10 takes place.

11 THE COURT: And what happens as a result of the
12 shooting?

13 MR. SOSINSKY: The person was killed.

14 THE COURT: Okay.

15 MR. SOSINSKY: That's what I'm saying, he's a victim
16 of the shooting, the victim of the shooting -- I'm just laying
17 out I think the chronology that leads to the person's death
18 and arguing to Your Honor, and if Your Honor doesn't accept it
19 I respect your ruling, that it was, you know, somewhat remote
20 in time and in fact, in terms of the trustworthiness or the
21 independent corroboration, which is one of the issues that the
22 government just offered, if the meeting doesn't take place, I
23 think that's important for the Court to weigh in evaluating
24 whether or not to admit such a statement.

25 THE COURT: I was just trying to get your

1 understanding or your articulation of what you mean by
2 remote in time and I have that now.

3 MR. SOSINSKY: I never said it was days or weeks.

4 THE COURT: No, I understand what you did say.

5 MR. SOSINSKY: I'm making arguments that I can,
6 I hope.

7 THE COURT: Well, you can always make arguments to
8 this Court, they're more than welcome.

9 MR. SOSINSKY: Thank you.

10 THE COURT: Absolutely, absolutely.

11 Okay.

12 MS. HECTOR: Your Honor, and we would just suggest
13 that since this is a factually specific inquiry, you know, if
14 defense counsel wants to re-raise this when the witness is
15 testifying and we can discuss it at that time, that's also --
16 the government would be happy to do that.

17 THE COURT: Okay.

18 MR. SOSINSKY: I assume when I have the 3500
19 material, I'll have a more informed basis to make such a
20 further application to the Court, Judge.

21 THE COURT: I make no assumptions when I try cases,
22 I didn't as a lawyer, try not to do it as a judge, but you'll
23 have what you have when you get it.

24 MS. HECTOR: I believe the next issue, Your Honor,
25 is the expert testimony and I'm going to let my colleague,

1 Mr. Tucker, address that.

2 MR. TUCKER: Your Honor, I believe there were two
3 issues raised by defense counsel's submission on this point of
4 June 4th. The first related to timing and I believe, and I
5 don't want to speak for Mr. Sosinsky, I believe we've resolved
6 that through Your Honor's adjournment of the trial by one
7 week.

8 THE COURT: I must say I was a little bit nonplussed
9 by the late in the day nature of the disclosure of the expert.
10 I am prepared to believe that perhaps you only decided to go
11 with this expert recently but this question of remoteness in
12 time applies to many issues in this case and, well, I only
13 practiced law for 33 years but I always had a response when
14 people popped experts on me on the eve of trial and luckily
15 you won't have to be the brunt of that but I'm glad to see
16 that you worked it out because I wasn't very happy about that.
17 So, you've agreed on the timetable.

18 Let me ask defense counsel, are you going to get
19 your own expert to counter their expert?

20 MR. SOSINSKY: I've already reached out and I hope
21 today or tomorrow we'll have that issue settled in terms of
22 having someone capable of reviewing the information and
23 assisting us and in the event that we intend, or that it is
24 likely that we intend then to bring this person in, I will, of
25 course, provide the government with notice. If we're simply

1 going to be consulting with this person, then I won't because
2 it will be irrelevant for trial purposes.

3 THE COURT: Right, but if you are going to bring
4 them in as a witness at the trial, my question to you is when
5 do you anticipate informing the government of that?

6 MR. SOSINSKY: Certainly, Your Honor, this week and
7 I hope even by the middle of this week and it will be somebody
8 well known to the government if it is the person that we've
9 reached out to already.

10 THE COURT: So, you'll make that identification on
11 ECF and that will be a matter of public record just so we're
12 not playing hide the ball, I mean more than you're allowed to
13 play hide the ball from one another; yes?

14 MR. SOSINSKY: Yes.

15 THE COURT: Okay.

16 MR. TUCKER: Your Honor, just related basically,
17 so that we have a perfectly clear record, I understand the
18 Court's ruling as having denied defense counsel's motion to
19 preclude the government's expert?

20 THE COURT: I'm denying the defense motion to
21 preclude the government expert but I'm also urging the
22 government to be perhaps in this case and in others a little
23 bit more time sensitive with respect to identifying experts
24 and providing reports and I'm also urging the defense counsel
25 to be as forthcoming as you can be with respect to the

1 identification of your expert and whether or not your expert
2 will be testifying.

3 MR. TUCKER: Understood, Your Honor.

4 THE COURT: All right.

5 MR. SOSINSKY: Yes.

6 Okay. I wasn't aware until just now that Your Honor
7 had already decided to deny not on the notice issue, which we
8 did take care of, but on evidentiary issues the proffer of the
9 government expert.

10 THE COURT: Yes, I'm denying the defense objection
11 to it and it will come in.

12 MR. SOSINSKY: Okay.

13 MS. HECTOR: I believe we have only one remaining
14 issues and my colleague, Maggie Gandy, is going to address
15 that.

16 THE COURT: Yes, Ms. Gandy.

17 MS. GANDY: Yes, Your Honor. We wanted to make
18 a brief record regarding the history of plea negotiation
19 discussions that have happened in this case. They certainly
20 have not been extensive but we did make clear to counsel, who
21 as Your Honor knows is the second attorney on the case, that
22 prior to our presentation of evidence regarding the first
23 superseding indictment to the grand jury we did speak to prior
24 counsel about whether or not there was any interest in a
25 possible resolution on the case.

1 Counsel at the time made clear to us that his client
2 would, if interested in anything, would be interested in
3 something in the ballpark of a 24 month recommendation on
4 sentencing. We made clear that our position would be, and
5 again this is on the original indictment, that we would be
6 advocating for something at or near the statutory maximum.
7 Obviously it was a far spread away from what the defendant was
8 interested in potentially at the time.

9 So, we made that clear to current counsel that that
10 conversation, although an informal conversation, there was no
11 plea agreement, written proposal ever presented, was made to
12 prior counsel and we've made clear to current counsel that if
13 there's any interest in a conversation regarding a possible
14 disposition at this point, he should raise that with us as
15 soon as possible. We'd be happy to have a conversation at
16 least, although, as I've said, no formal plea offer has ever
17 been made by the government.

18 THE COURT: Just one point of clarification
19 addressed to both counsel, I know that Mr. Dratel has been
20 on the silken road since leaving this case and Bitcoin but
21 did he formally withdraw as counsel in this case?

22 MR. SOSINSKY: Your Honor, he made application and
23 Your Honor granted it.

24 THE COURT: Okay. I just wanted to make sure that
25 we've had that happen because I did remember seeing his name

1 show up at least on service lists. So, he has withdrawn from
2 the case.

3 MR. SOSINSKY: Yes, I think back in November of last
4 year.

5 THE COURT: Okay, that's fine, just as long as he's
6 out and you're in.

7 With respect to what they just said, any comments?
8 You don't have to.

9 MR. SOSINSKY: Yes, I mean at this point what I can
10 say is this came up really for the first time between us, that
11 is between myself and the government towards the end of last
12 week when I asked the government whether or not they had ever
13 expressed, you know, more formally what their position
14 previously had been, meaning historically, not as of that
15 moment, because obviously I had been given the file by
16 Mr. Dratel, spoken briefly about it with him, spoken with my
17 client a lot and it was not clear to me, based on anything I
18 ever looked at either, that the government's position on
19 resolution was communicated in a way that my client understood
20 and appreciated and that could potentially be an issue.

21 We discussed the fact that if Mr. Choudhry was
22 interested now, and one would think in the past, about taking
23 a plea, that there were opportunities for his prior counsel,
24 as there would have been for me, to discuss this with the
25 government but we also did agree that we would have further

1 discussions about that issue, not about a plea offer but about
2 this specific issue about what, if any, discussions there have
3 been and, hence, today's on the record discussion. That's how
4 it came up in the first instance was me expressing to the
5 government that I'm not sure my client had any understanding
6 of whatever they say transpired informally other than that it
7 wasn't going -- that nothing like what Mr. Dratel had proposed
8 apparently was going to occur.

9 MS. HECTOR: Your Honor, we would just note to make
10 the record absolutely clear on this, the defense counsel seems
11 to be making sort of equivocal statements about whether a plea
12 offer was communicated or whether plea discussions were had
13 with -- and, again, we're not saying that a formal plea offer
14 was ever made to the defendant. This discussion occurred with
15 previous counsel. But I'm a little concerned about the
16 equivocal comments about whether those discussions were ever
17 communicated to the client, the defendant, and I'm not sort of
18 hearing one way or the other whether they were or were not but
19 I just want to make clear that the government has said to
20 defense counsel that if he believes there's an issue there,
21 defense counsel should alert the government of a potential
22 issue.

23 THE COURT: Just to make it clear --

24 MS. HECTOR: And I've not heard yet there is an
25 issue.

1 THE COURT: Just to make it clear, I'll ask defense
2 counsel, is it your understanding that there were informal
3 discussions with your predecessor counsel about a plea? I'm
4 asking you.

5 MR. SOSINSKY: Right.

6 THE COURT: What is your understanding?

7 MR. SOSINSKY: Essentially what the government has
8 said, meaning that there was a one-time conversation either
9 outside the courtroom or in their office, and it was brief,
10 Mr. Dratel sort of outlined what he would like. The
11 government let him know that nothing like that was working,
12 although apparently it would have -- an agreement would have
13 allowed both parties to make arguments to the Court framed by
14 statutory minimums and maximums and that was the total extent
15 of my understanding of what interaction ever took place
16 between Mr. Dratel and the government.

17 THE COURT: Now, with respect to Mr. Dratel's
18 communication with your client, is it your understanding that
19 he did communicate that offer, is it your understanding that
20 he did not communicate that offer, or is it your understanding
21 that you do not know whether he communicated that offer?

22 MR. SOSINSKY: Well, it's my understanding that he
23 certainly communicated to the defendant that a sentence that
24 low and, as I understand, even lower than that was not going
25 to be agreed to by the government. My concern and the reason

1 I raised this last week was there's a lot left between that
2 and where else the government would have been willing to agree
3 to and then ultimately leaving it up to the Court and on
4 that -- and I told them I would address this in the next few
5 days and I will.

6 THE COURT: Just so we're absolutely clear because
7 whatever the situation with Mr. Dratel was or wasn't, he's
8 out, you're in.

9 MR. SOSINSKY: Yes.

10 THE COURT: To the extent that there are plea
11 negotiations between the government and the defendant, you
12 obviously will communicate that because that's obviously
13 what's important, correct, at this point?

14 MR. SOSINSKY: And it's for that reason that I
15 brought it up with them last week.

16 THE COURT: I'm talking about now, not last week but
17 now, to the extent that anything is communicated to you, you
18 will bring it to your client.

19 MR. SOSINSKY: Always, always, yes.

20 THE COURT: Okay. Now, is there anything that
21 you're going to be communicating to the defendant between now
22 and the start of trial that we should just know that the lines
23 of communication are open or does the government wish to say
24 anything about that at all because I don't really want to get
25 bogged down in the last war, I want to be a good general and

1 learn from the last war and not fight the last war. So, this
2 is about where we are now.

3 So, where we are now, I'll ask the government?

4 MS. HECTOR: Your Honor, the government has no
5 comment on that but we take defense counsel's statement that
6 were there to be any discussions, they would be appropriately
7 communicated to his client.

8 THE COURT: Okay. Is that your position as well,
9 sir?

10 MR. SOSINSKY: Of course.

11 THE COURT: If there are any discussions, you will
12 communicate them to your client and obviously if your client
13 has anything to say to the government, you will communicate
14 that to the government, is that right?

15 MR. SOSINSKY: Absolutely, sir.

16 THE COURT: So, if there's anything to communicate,
17 you folks will communicate one to another, right?

18 MR. SOSINSKY: Yes, sir.

19 MS. HECTOR: Yes, sir.

20 THE COURT: Good.

21 What else do we have?

22 MS. HECTOR: I think that's -- oh, Your Honor, the
23 scheduling order indicated that we would submit questions for
24 voir dire today. We have spoken to defense counsel about the
25 possibility of conferring on some of those questions and

1 reaching an agreement, so we would ask that, and I think this
2 would be a joint request, that we have a couple of days to see
3 if we can do that so we don't burden the Court with competing
4 voir dire requests.

5 THE COURT: I don't feel burdened but however you
6 wish to proceed as sophisticated counsel is fine with me.

7 MR. SOSINSKY: Can we have until Wednesday, Your
8 Honor?

9 THE COURT: You may have until -- this Wednesday?

10 MR. SOSINSKY: Yes.

11 THE COURT: It's old school, when people say can we
12 have till Wednesday and then it turns out to be some other
13 Wednesday.

14 MR. SOSINSKY: Now that Your Honor has agreed that
15 next Monday we're going to pick the jury, so we better get it
16 to you this Wednesday, not the following Wednesday.

17 THE COURT: Well, I realize that but I've seen
18 lawyers say, well, we didn't say what Wednesday and then I
19 feel more foolish than I ordinarily do which is foolish
20 enough. All right. This Wednesday.

21 Can we pick a time, let's say 5:30 p.m. on ECF, does
22 that work for you ladies and gentlemen?

23 MS. HECTOR: Thank you.

24 MR. SOSINSKY: Certainly.

25 THE COURT: Is there anything else that we need to

1 talk about?

2 MR. SOSINSKY: I will be submitting via ECF later
3 today an application for Your Honor to sign so that my client
4 is properly attired here at trial.

5 I've been in communication with the MDC about this
6 and hopefully we don't have to think about that after it's
7 served upon them.

8 THE COURT: That's absolutely not a problem,
9 although I once had a lawyer say that everything was fine
10 except his client didn't have shoes and I pointed out that
11 that's why God made Fulton Street and I gave him a time to go
12 out and buy shoes, but hopefully soup to nuts, head to toe
13 everything will be worked out in the haberdashery land but I
14 am not the glass of fashion, I always wear this basic black
15 and there you have it.

16 Is there anything else?

17 MS. HECTOR: No, Your Honor.

18 MR. SOSINSKY: No, Judge.

19 THE COURT: Thank you.

20 Mr. Jackson, we need to exclude time.

21 THE COURTROOM DEPUTY: Yes, Judge.

22 THE COURT: He gave me the need to exclude time
23 face.

24 So, we will exclude time to and including the
25 beginning of the trial. Is that right, Mr. Jackson?

1 THE COURTROOM DEPUTY: That's correct, Judge.

2 THE COURT: What date are we going to put in for the
3 exclusion of time?

4 COURTROOM DEPUTY: 6/6 to 6/23/2014 because of the
5 decision you entered last Friday.

6 THE COURT: 6/23/2014.

7 We will ask counsel to sign that and also the
8 defendant if he's willing to sign that as well.

9 We'll make that Court Exhibit One in evidence when
10 it's been signed by everyone including the judge.

11 (Pause.)

12 THE COURT: Thank you.

13 I have what has been marked as Court Exhibit One for
14 identification, the waiver of speedy trial and order of
15 excludable delay form extending time from today's date,
16 June 6 -- sorry, it says today's date -- extending it from
17 June 6 of 2014 to and including June 23rd of 2014. It's been
18 signed by counsel but I don't see -- has the defendant signed
19 it?

20 THE COURTROOM DEPUTY: Yes, Your Honor.

21 THE COURT: Okay. And the prosecution. I'm signing
22 it now.

23 May I have a motion to have it admitted into
24 evidence please?

25 MS. HECTOR: Yes, Your Honor, so move.

1 THE COURT: Any objection?

2 MR. SOSINSKY: No, sir.

3 THE COURT: It's admitted.

4 Here you are, Mr. Jackson.

5 THE COURTROOM DEPUTY: Thank you, Judge.

6 THE COURT: It will be part of the record.

7 Is there anything else?

8 MS. HECTOR: No, Your Honor.

9 MR. SOSINSKY: Nothing further, Your Honor.

10 THE COURT: Thank you. We are adjourned.

11 MS. HECTOR: Thank you.

12 (Time noted: 11:45 a.m.)

13 (End of proceedings.)

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